

AMENDED IN ASSEMBLY SEPTEMBER 2, 1997

AMENDED IN ASSEMBLY AUGUST 11, 1997

AMENDED IN ASSEMBLY JULY 10, 1997

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 536

**Introduced by Senator Mountjoy
(Coauthor: Senator Polanco)**

February 24, 1997

An act to amend Sections 6601.3, 6601.5, 6602, 6609.1, 6609.2, and 6609.3 of, to amend, repeal, and add Section 6604 of, and to add Section 6602.5 to, the Welfare and Institutions Code, relating to sexually violent predators, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 536, as amended, Mountjoy. Sexually violent predators.

(1) Under existing law, in effect until January 1, 1998, the Board of Prison Terms may order that a person who is screened as a sexually violent predator and referred to the State Department of Mental Health for full evaluation remain in custody for no more than 45 days.

This bill would delete the repeal date of this provision and would authorize the Director of Corrections to refer the person to the State Department of Mental Health for evaluation at a date that is less than 6 months prior to the inmate's scheduled release date, and the Board of Prison Terms to order imposition of a temporary hold on the inmate

for up to 3 working days pending a probable cause hearing by the board, under specified circumstances. If probable cause is found at the hearing that the inmate is a sexually violent predator, the bill would authorize the board to order that the person remain in custody for full evaluation by the State Department of Mental Health, as described above, for evaluation of the case by the county's designated counsel, and for a court hold, as specified. The bill would provide that no person may be placed in a state hospital pursuant to these provisions until there has been a determination that there is probable cause to believe that the person is a sexually violent predator.

(2) Existing law requires a judge of the superior court to review any petition for commitment of a person determined to be a sexually violent predator by the State Department of Mental Health pursuant to the provisions in (1) above, and to determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release.

This bill instead would require the judge to determine whether there is probable cause to believe that the individual named in the petition is a sexually violent predator. The bill would specify that this provision does not constitute a change in, but is declaratory of, existing law and consistent with current practice.

(3) Existing law requires a person who is determined to be a sexually violent predator to be committed for 2 years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility, as specified.

This bill would provide, until January 1, 1999, that the 2-year period of commitment as a sexually violent predator commences on the date upon which the court issues the initial order of commitment and shall not be reduced by any time spent in a secure facility prior to the order of commitment. The bill would specify that this provision does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the State Department of Mental Health to notify local law enforcement officials 15 days prior to the scheduled release of a sexually violent predator.



This bill instead would require the department to notify local law enforcement officials 15 days prior to the submission to a court of its recommendation for community outpatient treatment for any person committed as a sexually violent predator or its recommendation not to pursue recommitment of the person.

(5) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6601.3 of the Welfare and
2 Institutions Code is amended to read:
3 6601.3. If the inmate was received by the
4 Department of Corrections with less than nine months of
5 his or her sentence to serve, or if the inmate's release date
6 is modified by judicial or administrative action, the
7 director may refer the person to the State Department of
8 Mental Health for evaluation in accordance with this
9 section at a date that is less than six months prior to the
10 inmate's scheduled release date, and the Board of Prison
11 Terms may order imposition of a temporary hold on the
12 inmate for up to three working days pending a probable
13 cause hearing by the board. If probable cause is found at
14 the hearing, that the inmate is a sexually violent predator,
15 the board may order the person to remain in custody for
16 no more than 45 days for full evaluation pursuant to
17 subdivisions (c) to (i), inclusive, of Section 6601, for
18 evaluation of the case by the county's designated counsel,
19 and for the court hold imposed pursuant to Sections
20 6601.5 and 6602, unless his or her scheduled date of release
21 falls more than 45 days after referral.
22 SEC. 2. Section 6601.5 of the Welfare and Institutions
23 Code is amended to read:
24 6601.5. In cases where an inmate's prison term, return
25 to custody, or temporary hold pursuant to Section 6601.3
26 will expire before a probable cause hearing is conducted
27 pursuant to Section 6602, the agency bringing the petition

1 may request an urgency review pursuant to this section.
2 Upon that request, a judge of the superior court shall
3 review the petition and determine whether the petition
4 states or contains sufficient facts that, if true, would
5 constitute probable cause to believe that the individual
6 named in the petition is likely to engage in sexually
7 violent predatory criminal behavior upon his or her
8 release. If the judge determines that the petition, on its
9 face, supports a finding of probable cause, the judge shall
10 order that the person be detained in a secure facility until
11 a hearing can be held pursuant to Section 6602. The
12 probable cause hearing provided for in Section 6602 shall
13 be held within 10 calendar days of the date of the order
14 issued by the judge pursuant to this section.

15 SEC. 3. Section 6602 of the Welfare and Institutions
16 Code is amended to read:

17 6602. A judge of the superior court shall review the
18 petition and shall determine whether there is probable
19 cause to believe that the individual named in the petition
20 is a sexually violent predator. The person named in the
21 petition shall be entitled to assistance of counsel at the
22 probable cause hearing. If the judge determines *that*
23 there is not probable cause, he or she shall dismiss the
24 petition and any person subject to parole shall report to
25 parole. If the judge determines that there is probable
26 cause, the judge shall order that the person remain in
27 custody in a secure facility until a trial is completed and
28 shall order that a trial be conducted to determine
29 whether the person is, by reason of a diagnosed mental
30 disorder, a danger to the health and safety of others in that
31 the person is likely to engage in acts of sexual violence
32 upon his or her release from the jurisdiction of the
33 Department of Corrections or other secure facility.

34 SEC. 4. Section 6602.5 is added to the Welfare and
35 Institutions Code, to read:

36 6602.5. No person may be placed in a state hospital
37 pursuant to the provisions of this article until there has
38 been a determination pursuant to Section 6601.3 or 6602
39 that there is probable cause to believe that the individual
40 is a sexually violent predator.



1 SEC. 5. Section 6604 of the Welfare and Institutions
2 Code is amended to read:

3 6604. (a) The court or jury shall determine whether,
4 beyond a reasonable doubt, the person is a sexually
5 violent predator. If the court or jury is not satisfied
6 beyond a reasonable doubt that the person is a sexually
7 violent predator, the court shall direct that the person be
8 released at the conclusion of the term for which he or she
9 was initially sentenced, or that the person be
10 unconditionally released at the end of parole, whichever
11 is applicable. If the court or jury determines that the
12 person is a sexually violent predator, the person shall be
13 committed for a period of two years to the State
14 Department of Mental Health for appropriate treatment
15 and confinement in a secure facility designated by the
16 Director of Mental Health *pursuant to Section 6600.05*,
17 and the person shall not be kept in actual custody longer
18 than two years unless a subsequent extended
19 commitment is obtained from the court incident to the
20 filing of a new petition for commitment under this article
21 or unless the term of commitment changes pursuant to
22 subdivision (e) of Section 6605. The two-year period of
23 commitment shall commence on the date upon which the
24 court issues the initial order of commitment pursuant to
25 this section. The two-year period shall not be reduced by
26 any time spent in a secure facility prior to the order of
27 commitment. For subsequent extended commitments,
28 the term of commitment shall be from the date of the
29 termination of the previous commitment. Time spent on
30 conditional release shall not count toward the two-year
31 term of commitment, unless the person is placed in a
32 locked facility by the conditional release program, in
33 which case the time in a locked facility shall count toward
34 the two-year term of commitment. ~~The facility shall be
35 located on the grounds of an institution under the
36 jurisdiction of the Department of Corrections.~~

37 (b) This section shall remain in effect only until
38 January 1, 1999, and as of that date is repealed, unless a
39 later enacted statute, that is enacted before January 1,
40 1999, deletes or extends that date.

1 SEC. 6. Section 6604 is added to the Welfare and
2 Institutions Code, to read:

3 6604. (a) The court or jury shall determine whether,
4 beyond a reasonable doubt, the person is a sexually
5 violent predator. If the court or jury is not satisfied
6 beyond a reasonable doubt that the person is a sexually
7 violent predator, the court shall direct that the person be
8 released at the conclusion of the term for which he or she
9 was initially sentenced, or that the person be
10 unconditionally released at the end of parole, whichever
11 is applicable. If the court or jury determines that the
12 person is a sexually violent predator, the person shall be
13 committed for a period of two years to the State
14 Department of Mental Health for appropriate treatment
15 and confinement in a secure facility designated by the
16 Director of Mental Health *pursuant to Section 6600.05*,
17 and the person shall not be kept in actual custody longer
18 than two years unless a subsequent extended
19 commitment is obtained from the court incident to the
20 filing of a new petition for commitment under this article
21 or unless the term of commitment changes pursuant to
22 subdivision (e) of Section 6605. Time spent on conditional
23 release shall not count toward the two-year term of
24 commitment, unless the person is placed in a locked
25 facility by the conditional release program, in which case
26 the time in a locked facility shall count toward the
27 two-year term of commitment. ~~The facility shall be
28 located on the grounds of an institution under the
29 jurisdiction of the Department of Corrections.~~

30 (b) This section shall become operative on January 1,
31 1999.

32 SEC. 7. Section 6609.1 of the Welfare and Institutions
33 Code is amended to read:

34 6609.1. (a) When the State Department of Mental
35 Health is considering a recommendation to the court for
36 community outpatient treatment for any person
37 committed as a sexually violent predator, it shall notify
38 the sheriff or chief of police, or both, and the district
39 attorney, who has jurisdiction over the community in
40 which the person may be released. The notice shall be

1 given at least 15 days prior to the department's
2 submission of that recommendation to the court and shall
3 include the name of the person who is scheduled to be
4 released and the community in which civil commitment
5 was established.

6 (b) When the State Department of Mental Health is
7 considering a recommendation not to pursue
8 recommitment of any person committed as a sexually
9 violent predator, it shall provide written notice of that
10 release to the sheriff or police chief, or both, and to the
11 district attorney, who has jurisdiction over the
12 community in which civil commitment was established.
13 The notice shall be made at least 15 days prior to the date
14 on which the notification is to be forwarded from the
15 department to the court that will consider the
16 department's recommendation not to pursue the
17 extension of the civil commitment.

18 Those agencies receiving the notice referred to in this
19 subdivision shall have 15 days from receipt of the notice
20 to provide written comment to the department
21 regarding the impending release. Those comments shall
22 be considered by the department, which may modify its
23 decision regarding the community in which the person is
24 scheduled to be released, based on those comments.

25 (c) If the court orders the immediate release of a
26 sexually violent predator, the department shall notify the
27 sheriff or chief of police, or both, and the district attorney,
28 who has jurisdiction over the community in which the
29 person is scheduled to be released at the time of release.

30 (d) The notice required by this section shall be made
31 whether or not a request has been made pursuant to
32 Section 6609.

33 (e) The time limits imposed by this section are not
34 applicable where the release date of a sexually violent
35 predator has been advanced by a judicial or
36 administrative process or procedure that could not have
37 reasonably been anticipated by the State Department of
38 Mental Health and where, as the result of the time
39 adjustments, there is less than 30 days remaining on the
40 commitment before the inmate's release, but notice shall

1 be given as soon as practicable. In no case shall notice
2 required by this section to the appropriate agency be
3 later than the day of release. If, after the 45-day notice is
4 given to law enforcement and to the district attorney
5 relating to an out-of-county placement, there is change of
6 county placement, notice to the ultimate county of
7 placement shall be made upon the determination of the
8 county of placement.

9 SEC. 8. Section 6609.2 of the Welfare and Institutions
10 Code is amended to read:

11 6609.2. (a) When any sheriff or chief of police is
12 notified by the State Department of Mental Health of its
13 intention to make a recommendation to the court
14 concerning the disposition of a sexually violent predator
15 pursuant to subdivision (a) or (b) of Section 6609.1, that
16 sheriff or chief of police may notify any person designated
17 by the sheriff or chief of police as an appropriate recipient
18 of the notice.

19 (b) A law enforcement official authorized to provide
20 notice pursuant to this section, and the public agency or
21 entity employing the law enforcement official, shall not
22 be liable for providing or failing to provide notice
23 pursuant to this section.

24 SEC. 9. Section 6609.3 of the Welfare and Institutions
25 Code is amended to read:

26 6609.3. At the time a notice is sent pursuant to
27 subdivision (a) or (b) of Section 6609.1, the sheriff, chief
28 of police, or district attorney so notified shall also send a
29 notice to persons described in Section 679.03 of the Penal
30 Code who have requested a notice, informing those
31 persons of the fact that the person who committed the
32 sexually violent offense may be released, together with
33 information identifying the court that will consider the
34 conditional or unconditional release. When a person is
35 approved by the court to be conditionally released, notice
36 of the community in which the person is scheduled to
37 reside shall also be given only if it is (1) in the county of
38 residence of a witness, victim, or family member of a
39 victim who has requested notice, or (2) within 25 miles
40 of the actual residence of a witness, victim, or family

1 member of a victim who has requested notice. If, after
2 providing the witness, victim, or next of kin with the
3 notice, there is any change in the release status or the
4 community in which the person is to reside, the sheriff,
5 chief of police, or district attorney shall provide the
6 witness, victim, or next of kin with the revised
7 information.

8 In order to be entitled to receive the notice set forth in
9 this section, the requesting party shall keep the sheriff,
10 chief of police, and district attorney who were notified
11 under Section 679.03 of the Penal Code, informed of his
12 or her current mailing address.

13 SEC. 10. The Legislature finds and declares that
14 Section 3 of this act, which amends Section 6602 of the
15 Welfare and Institutions Code, does not constitute a
16 change in, but is declaratory of, existing law and
17 consistent with current practice.

18 SEC. 11. The Legislature finds and declares that the
19 provisions of Article 4 (commencing with Section 6600)
20 of Chapter 2 of Part 2 of Division 6 of the Welfare and
21 Institutions Code establish a civil mental health
22 commitment for a period of two years for persons found
23 to be sexually violent predators and that, consistent with
24 a civil mental health commitment, credits that may
25 reduce a term of imprisonment are not applicable.
26 Accordingly, the Legislature finds and declares that
27 Section 5 of this act, which amends Section 6604 of the
28 Welfare and Institutions Code, does not constitute a
29 change in, but is declaratory of, existing law.

30 SEC. 12. *This act is an urgency statute necessary for*
31 *the immediate preservation of the public peace, health,*
32 *or safety within the meaning of Article IV of the*
33 *Constitution and shall go into immediate effect. The facts*
34 *constituting the necessity are:*

35 *In order to provide immediate protection to the public*
36 *from sexually violent predators who will be released in*
37 *the near future, it is necessary that this act take effect*
38 *immediately.*

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